

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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11 RICHIE CHARLES HARVEY,
12 Inmate Booking No. 12582317,

13 Plaintiff,

14 vs.

15 SAN DIEGO CITY JAIL; SHERIFF'S
16 DEPARTMENT; MEDICAL
17 DEPARTMENT; JOHN/JANE DOES 1-10;
18 CAPT. DANIEL PENNER,

19 Defendants.

Civil No. 13-0287 LAB (RBB)

**ORDER DENYING MOTION TO
PROCEED *IN FORMA PAUPERIS*
AND DISMISSING CASE WITHOUT
PREJUDICE PURSUANT TO
28 U.S.C. § 1915(a)**

[ECF No. 13]

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21 Plaintiff, currently housed at Utah State Prison located in Draper, Utah, and proceeding
22 pro se, has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff has not prepaid
23 the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed
24 *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [ECF No. 13]. This is Plaintiff's
25 second Motion to Proceed IFP. The Court denied Plaintiff's previous Motion to Proceed IFP
26 for failing to submit a certified copy of his prison trust account statement for the 6-month period
27 immediately preceding the filing of his Complaint as required by 28 U.S.C. § 1915(a)(2). (ECF
28 No. 5 at 1-2.) Plaintiff's current Motion to Proceed IFP must be denied on the same grounds.

1 **I. MOTION TO PROCEED IFP**

2 All parties instituting any civil action, suit or proceeding in a district court of the United
 3 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28
 4 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is
 5 granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). *See*
 6 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176,
 7 1177 (9th Cir. 1999). "Under the PLRA [Prison Litigation Reform Act], all prisoners who file
 8 IFP civil actions must pay the full amount of the filing fee," regardless of whether the action is
 9 ultimately dismissed for any reason. *See Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002)
 10 (citing 28 U.S.C. § 1915(b)(1) & (2)).

11 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also
 12 submit a "certified copy of the trust fund account statement (or institutional equivalent) for the
 13 prisoner for the 6-month period immediately preceding the filing of the complaint...." 28 U.S.C.
 14 § 1915(a)(2). From the certified trust account statement, the Court assesses an initial payment
 15 of 20% of (a) the average monthly deposits in the account for the past six months, or (b) the
 16 average monthly balance in the account for the past six months, whichever is greater, unless the
 17 prisoner has no assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter,
 18 the institution having custody of the prisoner must collect subsequent payments, assessed at 20%
 19 of the preceding month's income, in any month in which the prisoner's account exceeds \$10, and
 20 forward those payments to the Court until the entire filing fee is paid. *See* 28 U.S.C.
 21 § 1915(b)(2).

22 While Plaintiff has filed a second Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a),
 23 once again, he has not attached a certified copy of his prison trust account statement for the 6-
 24 month period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);
 25 S.D. CAL. CIVLR 3.2. Section 1915(a)(2) clearly mandates that prisoners "seeking to bring a
 26 civil action ...without prepayment of fees ... *shall* submit a certified copy of the trust fund
 27 account statement (or institutional equivalent) ... for the 6-month period immediately preceding
 28 the filing of the complaint." 28 U.S.C. § 1915(a)(2) (emphasis added).

1 Without Plaintiff's trust account statement, the Court is simply unable to assess the
2 appropriate amount of the filing fee which is statutorily required to initiate the prosecution of
3 this action. *See* 28 U.S.C. § 1915(b)(1).

4 **II. CONCLUSION AND ORDER**

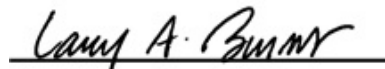
5 For the reasons set forth above, **IT IS ORDERED** that:

6 (1) Plaintiff's Motion to Proceed IFP [ECF No. 13] is DENIED and the action is
7 DISMISSED without prejudice for failure to prepay the \$400 filing fee mandated by 28 U.S.C.
8 § 1914(a).

9 (2) Plaintiff is GRANTED an additional forty-five (45) days from the date of this
10 Order to either: (a) prepay the entire \$350 civil filing fee and \$50 administrative fee in full; **or**
11 (b) complete and file a Motion to Proceed IFP *which includes a certified copy of his trust*
12 *account statement for the 6-month period preceding the filing of his Complaint. See* 28 U.S.C.
13 § 1915(a)(2); S.D. CAL. CIVLR 3.2(b). If Plaintiff chooses to file a Motion to Proceed IFP which
14 the Court later grants, the \$50 administrative fee will be waived.

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a
16 Court-approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this
17 matter. If Plaintiff neither pays the \$400 filing fee in full nor sufficiently completes and files
18 the attached Motion to Proceed IFP, *together with a certified copy of his trust account statement*
19 *within 45 days*, this action shall remain closed without further Order of the Court.

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21 DATED: July 1, 2013

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23 **HONORABLE LARRY ALAN BURNS**
24 United States District Judge